

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CARMEN TATE,)	
)	
Petitioner,)	
vs.)	2:09-cv-130-WTL-JMS
)	
HELEN J. MARBERRY, Warden,)	
)	
Respondent.)	

ENTRY


Habeas petitioner Carmen Tate failed to prevail in this action. Tate has filed a notice of appeal, which has been processed by the clerk. Presently before the court is Tate's combined request to proceed on appeal *in forma pauperis* and his motion for appointment of counsel.

Tate seeks leave to proceed on appeal without prepayment of the appellate fees of \$455.00. An appeal may not be taken *in forma pauperis* if the trial court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915; see *Coppedge v. United States*, 369 U.S. 438 (1962). "Good faith" within the meaning of § 1915 must be judged by an objective, not a subjective, standard. See *id.* There is no objectively reasonable argument Tate could present to argue that the disposition of this action was erroneous. In pursuing an appeal, therefore, the petitioner "is acting in bad faith . . . [because] to sue in bad faith means merely to sue on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit." *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). Accordingly, his appeal is not taken in good faith, and for this reason his request for leave to proceed on appeal *in forma pauperis* is **denied**.

Tate also seeks the appointment of counsel pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A. This motion is **denied** because (a) it has been filed in the wrong forum, and (b) there is no supportable reason to appoint counsel to aid in a frivolous appeal.

IT IS SO ORDERED.

Date: 03/25/2010


Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Distribution:

Gerald A. Coraz
UNITED STATES ATTORNEY'S OFFICE
gerald.coraz@usdoj.gov

Carmen Tate
02551-424
Terre Haute - FCI
Federal Correctional Institution
P.O. Box 33
Terre Haute, IN 47808